INTERNAL REVIEW DRAFT ONLY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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Reply to
Attn Of: OWW-134

Neil Mullane, Administrator
Water Quality Division
Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204-1390

RE: Determination of Progress - Oregon's Nonpoint Source Management Program

Dear Mr. Mullane:

Thank you for submitting the *Oregon Nonpoint Source Pollution Program 2008 Annual Report* (Annual Report), prepared by the Oregon Department of Environmental Quality (ODEQ). Section 319(h)(11) of the Clean Water Act requires States to report annually on progress in meeting the Nonpoint Source (NPS) Management Program milestones, and report available information on reductions in NPS loadings and improvements in water quality resulting from program implementation. The Environmental Protection Agency (EPA) must establish whether or not the State has made "satisfactory progress" during the year in implementing the milestones of its NPS Management Program prior to awarding the following fiscal year Section 319 grant funding. The Annual Report is a primary means (along with other reporting conducted under the 319 program) by which EPA makes this determination and assesses performance under the Section 319 grants.

Based on our review the available information we have concluded that Oregon has made satisfactory progress the past year implementing its NPS management program. We have emphasized below in our review the areas of accomplishment last year as reflected in the Annual Report as well as needs for further emphasis in order to demonstrate continued progress under the Section 319 and NPS program measures. We appreciated the opportunity to meet with ODEQ this past March to discuss the NPS program and areas for further coordination with ODEQ on NPS, 319 and TMDL implementation issues. We look forward to working cooperatively with ODEQ to address these issues.

State Section 319 Funding Allocations

Oregon's EPA-approved Nonpoint Source Control Program Plan, updated in 2000, provides the framework for NPS program implementation activities in the State. The Annual Report describes progress by ODEQ along with other federal, state and local agencies in implementing NPS control-related activities across the various sectors. As indicated in the Annual Report, the overall Section 319 funding awarded to Oregon by EPA from the yearly appropriation is spilt between the Oregon Performance Partnership Grant (PPG) - to fund staff supporting the NPS program under the PPG workplan - and a separate yearly state 319 grant from which the state passes through funding directly to

the local 319 implementation projects. ODEQ activities supported through that overall yearly Section 319 funding and described in the Annual Report, include NPS program administration and management, local 319 project implementation, Total Maximum Daily Load (TMDL) development and implementation, and related NPS program activities.

Last year, approximately 52% ($1,387,400) of Oregon's total FY 2008 federal Section 319 funding allocation of $2,675,700 was passed through by ODEQ (though the categorical 319 program grant) to local projects. The remainder of that allocation was again reserved for the Oregon Performance Partnership Grant (PPG). As indicated in previous reviews, the percentage of the 319 allocation passed through by ODEQ to directly fund local 319 projects was as high as 68% in 2002, which is prior to the time some of the 319 funds began being added to the PPG, beginning in federal fiscal year (FFY) 2004. We do encourage ODEQ to direct available State 319 funds toward development and implementation of watershed-based plans in impaired waters, consistent with the allowable use of incremental funding under the 319 guidance. We will work with ODEQ to determine how 319 incremental funding may be utilized to meet this condition - whether through implementation efforts supported directly through the 319 grant-funded projects, or through the PPG.

Development and Implementation of Local 319 Projects

The Annual Report describes the status and progress of those local projects supported directly with the portion of the 319 funding allocation. These projects include riparian restoration, implementation of best management practices (BMPs), pesticides stewardship partnerships, groundwater protection, assessment and monitoring, technical assistance, and outreach and education projects, among others. A number of these projects implement TMDLs. ODEQ also continues to leverage these federal 319 grant funds with Oregon Watershed Enhancement Board (OWEB) project grant funding, and coordinate with OWEB to merge water quality efforts with salmonid recovery, as described in the Oregon Plan for Salmon and Watersheds. ODEQ is also using Clean Water State Revolving Fund (CWSRF) loan funds to support NPS projects. EPA again strongly supports these cooperative funding efforts.

The Annual Report describes the process ODEQ used to solicit, evaluate and select 319 projects for funding in 2008 through the Request for Proposals (RFP), and how the process will apply in 2009. This includes ODEQ regional input into the review and ranking of projects under the evaluation criteria. ODEQ has also conducted a planning effort to prioritize NPS concerns and priorities, and workplans were developed. The Annual Report lists the geographic and programmatic priorities for 319 projects by region, which were identified in RFP. The RFP for the upcoming 2009 319 projects was developed and new projects were also subsequently reviewed under that solicitation. We support the planning, prioritization and ranking of projects as consistent with the 319 program and grant guidance. This incorporates watershed-based plans including the nine key watershed plan elements to guide the identification, development, and selection of 319 projects for funding.

The progress of 319-funded projects from 2005 to 2008 is summarized in the Annual Report. Thank you for providing this information to aid in assessing grant performance. Due to these 319 grants being awarded by EPA yearly, each with multiple-year grant periods, a considerable number of individual 319 projects (funded by different grants) are in progress at any one time. During 2008, the three oldest state 319 grants (for FY 2002-2004) were closed-out. Thank you for providing the final project reports to

EPA. Due to concerns in the 319 program nationally about the level of unexpended 319 funds, we appreciate ODEQ efforts to obligate and expend funds and complete approved projects within the five-year grant periods.

The ODEQ Regional Offices continued to conduct important work reviewing and implementing projects within the 21 watershed basins and 91 sub-basins throughout the state. This included the evaluation and ranking of projects, technical assistance to the many watershed councils and local organizations which are developing and implementing projects, conducting project reviews and oversight, coordinating monitoring efforts, performing 319 project assessments, and outreach and education. The Annual Report describes these regional project support activities and accomplishments.

Impaired Waters, and TMDL Implementation, Watershed-Based Plans

Most of the waterbodies in Oregon which are not achieving water quality standards are impaired due to nonpoint sources (from agriculture, forestry, and urban runoff) affecting temperature, sediment, bacteria and nutrients levels. The Annual Report describes ODEQ's ongoing review of water quality standards and cited proposed revisions of human health criteria for fish consumption, the implementation directive issued for the 2007 revised temperature standard, and a sediment work group convened to discuss strategies for implementing Oregon's narrative temperature standard.

During 2008, TMDLs for 135 individual water segments were approved within two basins, including 109 for the Rogue Basin and 26 for Molalla Pudding (Willamette), for a cumulative total of 998 TMDLs to date. The Annual Report describes these newly developed TMDLs as well as general management strategies for meeting the TMDL pollutant load allocations.

The Annual Report describes the process for implementing TMDLs through the Designated Management Agencies (DMAs), including the ODEQ plan approvals and subsequent DMA implementation actions. ODEQ and agency partners continued implementation planning in the large Willamette Basin, within which 207 TMDL segments were approved in 2006. Implementation efforts are also now under way in the Rogue. We support the use of NPS funding for water quality improvement projects in these watersheds and in other impaired waters within which TMDL are being implemented.

We encourage the use of the ODEQ and DMA TMDL plans (and ODEQ implementation plan guidance) - to the extent possible - as a means to meet the requirements of nine-element watershed-based plans for Section 319 project funding. We recognize however that watershed plans meeting the nine elements require a high level of specificity particularly in order to identify all implementation actions and projects necessary to achieve load reductions from all sources on a watershed-wide basis. We will continue to work with ODEQ to explore ways under which these nine-element plans may be incorporated into the DMA planning process, particularly for implementation efforts currently underway, and in the future. The watershed-based plans are required for 319 projects identified for the incremental funding portion of the 319 allocation, and should then be cited in the Annual Report.

State Revolving Fund NPS Projects

ODEQ continued to provide loan assistance for NPS projects through the CWSRF program. The "sponsorship option" allows restoration projects to be funded in conjunction with wastewater projects - through a reduced interest rate. The City of Portland has utilized this incentive for riparian restoration work in three watersheds. The Farmers Irrigation District in Hood River has also used the loan program to finance the conversion from irrigation ditches to pipes, to improve water quality. A planned CWSRF loan to the Clackamas Soil and Water Conservation District will make loan funds available to District constituents, to address agricultural water quality impacts. Another area with potential is the use of CWSRF funds for TMDL implementation, including the finance by municipalities of NPS projects in the large area covered by the Willamette TMDL. Other NPS CWSRF projects are listed in the Annual Report as well, to which a total of almost $23 million in loan funding has been provided since 1994. EPA strongly supports all efforts to expand the use of CWSRF financing for NPS pollution control projects.

Agricultural Lands

The Oregon Department of Agriculture (ODA) continues to administer the Agricultural Water Quality Management Program (under Senate Bill 1010) and implement the Agricultural Water Quality Management Area Plans - which have been completed statewide. These "1010" plans are aimed at preventing and controlling soil erosion and water pollution from agricultural activities, and also serve to implement TMDLs affecting agricultural lands. ODA continues to provide support, technical assistance, and oversight to Oregon's 45 local Soil and Water and Conservation Districts which act as local management agencies to meet water quality goals on agricultural lands. The Annual Report describes in more detail the efforts ODEQ are engaged in to improve planning and communication with ODA and with the other federal and state agencies and the local districts in order to best address water quality concerns on agricultural lands within the state. Along those lines, further opportunities for coordination of state efforts with the Natural Resources Conversation Services (NRCS) are being explored, which EPA fully supports.

ODEQ has provided 319 funds to watershed councils to support the Pesticide Stewardship Partnership (PSP) projects in a number of watersheds since 2005. These projects have involved monitoring, and working collaboratively on the implementation of BMP's. Additionally, pesticide application and drift reduction workshops and waste collection events were held. The Annual Report describes the significant lowering of pesticide concentrations within the Walla Walla watershed between 2006 and 2007 as a result of implementation work supported by 319 funds. DEQ is also now working with PSP partnerships in three other watersheds with varying land uses within the North Willamette Valley (Clackamas, Pudding, and Yamhill Basins). ODEQ continues to provide 319 funding for existing and expanded PSPs.

The Annual Report also lists the accomplishments of the inter-agency Water Quality Pesticides Management Team during 2008, which includes agencies with an involvement in pesticides management. The Oregon Water Quality Pesticide Management Plan was developed to identify pesticides of concern and actions necessary to address elevated pesticide levels in state waters, and includes a pilot project in the Clackamas watershed which incorporates the PSP approach and various outreach efforts.

Forest Lands

The Annual Report describes state and ODEQ efforts to address water quality issues on state and private forest lands. A report is being prepared by ODEQ and Oregon Department of Forestry (ODF) regarding the status of water quality and biological integrity on forested lands. The ODF RipStream (Riparian Function and Stream Temperature) project was developed to evaluate the effectiveness of the Oregon Forest Practices (FPA) rules in protecting stream temperature and habitat. ODEQ is providing analysis of data and study results in cooperation with OFD staff. The Annual Report indicates that ODF was preparing a preliminary report to be presented to the Board of Forestry in the spring of 2009. The Forestlands Conversion Memorandum of Understanding was also previously developed among a number of State agencies and addresses the conversion of forest lands to non-forest uses in order to coordinate efforts and better ensure that water quality standards and resources are protected. The Forest Conversion Workgroup met and training sessions were planned during 2008. The Annual Report also describes ODF's Dynamic Ecosystem Policy Project, as well as ODEQ's participation in the Healthy Forests Reserve Program, which is aimed at establishing habitat easements on private forest lands.

The Annual Report describes state coordination with federal agencies to address water quality issues on forest lands. This includes activities of the Oregon Board of Forestry and the Federal Forestlands Advisory Committee (FFAC), which drafted the guidance document "Oregon's Vision for Federal Forestland." ODEQ cooperated in that effort and also is a partner to water quality Memoranda of Understanding and ongoing actions with the Forest Service and the Bureau of Land Management (BLM), addressing, in particular, TMDL development. ODEQ reviewed BLM's Western Oregon Plan revisions in a large planning area covering a number of 303(d)-listed waterbodies and TMDLs, and assessed BLM plan alternatives for meeting water quality standards.

Drinking Water Protection, and Groundwater Management Areas

Nonpoint sources are an acknowledged contributor to groundwater and drinking water contamination in the State. The Annual Report provides information regarding the source water assessments and plans prepared, and the protection strategies being employed - including public education, technical assistance, and the development of BMPs supported by ODEQ. Further developments to the state database, mapping interfaces, model ordinances, outreach and workshops statewide, and monitoring are cited in the Annual Report as activities which support drinking water protection in the State. Support by ODEQ's Drinking Water Protection Program to local agencies in land use planning, in promoting Smart Growth, and in development of local community drinking water protection plans is also cited.

Concern over elevated levels of nitrate in the groundwater of the Southern Willamette Valley led to it's designation by ODEQ as a Groundwater Management Area. Since then local stakeholders have been engaged in groundwater protection efforts aimed at reduce nitrate sources, including development of more efficient fertilizer application methods, septic system improvements and conversion to a new

treatment plant in Coburg, and public education and technical assistance. Some of the planning activities have been supported through Section 319 funding.

Coastal Nonpoint Pollution Control Program

Oregon's Coastal Nonpoint Pollution Control Program (CNPCP) is being developed pursuant to the Coastal Zone Act Reauthorization Amendments of 1990. The program's purpose is to protect coastal waters from NPS pollution through the implementation of various sector management measures. EPA and the National Oceanographic and Atmospheric Administration (NOAA) conditionally approved Oregon's program in 1998. Since that time, ODEQ, EPA, and NOAA have worked toward resolution of the remaining conditions for final program approval. The State has continued to implement certain management measures, conduct outreach, provide technical assistance, and initiate TMDL plan guidance for local governments under the CNPCP. EPA urges the State to continue to work closely with NOAA and EPA to satisfy those remaining conditions in order to move ahead toward final program approval in 2009.

Monitoring and Data

The Annual Report describes monitoring conducted by the state and ODEQ for TMDL development, groundwater assessments, large river ambient data, the Oregon Plan (stream assessments), and the support of volunteer modeling, coastal monitoring, and toxics and drinking water monitoring. The coastal Coho and Lower Columbia assessment reports are also cited. Monitoring is an important component of the NPS program and is necessary to document water quality improvements as a result NPS, 319 project, and TMDL implementation efforts as further emphasized below. We have discussed with ODEQ the availability of monitoring data and look forward to continuing to work with ODEQ to support these needs. One area for follow-up is how post-project monitoring can be accomplished to assess the results of 319 projects.

Reporting of Waterbody Restorations and 319 Project Load Reductions

Section 319 requires states to report annually on progress in meeting NPS Program milestones, available information on reductions in NPS loading, and improvements in water quality resulting from NPS program implementation. EPA is tracking progress through national measures which were developed under these objectives. For the NPS program, these measures include WQ-10 (NPS-impaired waterbodies which are now partially or fully restored) through Success Stories, and WQ-9 (annual reductions in lbs/nitrogen, lbs/phosphorous, and tons/sediment from Section 319 projects) through the Grants Reporting and Tracking System (GRTS). Watershed-based plan development and implementation has also been included in the national measures (as well as being a component of 319 programs and grant guidance).

Documentation for partial or full restoration/attainment of water quality standards (WQ-10) is through approval and publication on EPA's Success Stories website. Stories which do not meet WQ-10, but do document progress toward restoration (or showing ecological restoration) may also be

included on that website. The Annual Report includes the description of the Success Story for Diamond Lake in Oregon, an impaired waterbody now meeting water quality standards which counts toward WQ-10. We appreciate the assistance ODEQ provided last year in developing this story (as well as other potential Success Stories evaluated for inclusion). Also included in the Annual Report as an example of a successful project is a description of the Multnomah County Central Library (historic building) Ecoroof Project, which represents one of many green roof projects completed or underway in the Portland area.

EPA encourages the inclusion of Success Stories in the Annual Report and will continue to work with ODEQ to further document NPS and 319 program results, and in particular develop stories which show progress toward, and attainment of water quality standards as a result of NPS implementation activities. We have also discussed where monitoring data may be available, or is needed in order to document water quality improvement and restoration in impaired waterbodies. We acknowledge the challenges of documenting improvements in water quality for impairments requiring longer-term implementation measures, yet there should also be project BMP load reductions which may well result in measureable water quality improvement over the shorter-term on a smaller water segment scale.

Nitrogen, phosphorous and sediment load reductions from 319 projects are reported through the national GRTS database as a mandatory data element, and by grant condition. The pollutant load reductions for those projects with implementation measures (e.g. BMP's, or riparian restoration) which can estimated through the available load models need to be entered into GRTS by the yearly deadline for national reporting. We appreciate efforts by ODEQ to meet this requirement, and recognize that many 319 projects in Oregon address impairments (e.g. temperature) other than those reflected in the GRTS mandated load reduction reporting. Including the modeled national load reduction estimates to extent available however will contribute to the national program targets. This information can then be included in the Annual Report also.

Summary

In summary we wish to thank ODEQ for preparing the Annual Report and to acknowledge all the efforts of ODEQ and the other State partners in addressing NPS pollution problems in 2008. Based on our review of the Annual Report and supporting information under Section 319(h) of Clean Water Act, we conclude that Oregon has made satisfactory progress the past year implementing its NPS management program. We have also emphasized in this review those areas of accomplishment as reflected in the Annual Report, as well as those activities needing further action. We appreciated the opportunity to meet with ODEQ this past March to discuss the NPS program and areas for further coordination with ODEQ on NPS, 319 and TMDL implementation issues. EPA will continue to work in partnership with the State to address these overall NPS water quality issues, which include program activities and projects supported directly through EPA Section 319 funding.

Thank you again for submitting the FY 2008 Annual Report for Oregon's NPS Management Program. Please feel free to contact me at (206) 553-4198, or Rick Seaborne, our Nonpoint Source Coordinator, at (206) 553-8510.

Sincerely,

Michael A. Bussell, Director
Office of Water and Watersheds

cc: Gene Foster, Ivan Camacho, ODEQ

Thank you again for submitting the FY 2008 Annual Report for Oregon's NPS Management Program. Please feel free to contact me at (206) 553-4198, or Rick Seaborne, our Nonpoint Source Coordinator, at (206) 553-8510.

Sincerely,

Michael A. Bussell, Director
Office of Water and Watersheds

cc: Gene Foster, Ivan Camacho, ODEQ

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